

## **North Carolina DEMLR Response to Comments and Summary of Changes to NPDES Stormwater draft General Permit NCG160000 (2014 Renewal)**

### **Background**

NPDES Stormwater General Permit NCG160000, which regulates industrial stormwater discharges from facilities manufacturing asphalt paving mixtures and like industrial activities, expires on September 30, 2014. The North Carolina Division of Energy, Mineral, and Land Resources (DEMLR) posted the draft General Permit and the supporting Fact Sheet on the Stormwater Permitting Program website beginning August 15, 2014. We announced in selected newspapers across the state on or before June 10, 2014 that the draft of the proposed revised General Permit would be available on our website for public comment. DEMLR also ran this notice in the June 16, 2014 issue of the North Carolina Register.

The public comment period closed on September 12, 2014 (31 days), consistent with the regulatory minimum duration of 30 days.

DEMLR revises and reissues our NPDES stormwater General Permits on a five-year schedule. Every five years we solicit public comment, especially from the particular regulated industry sector; we review analytical data from the previous five-year term of the permits; we evaluate identified compliance problems and problems in our enforcement of the permits as may be reported by our Regional Office inspectors; and we seek to improve the effectiveness of the permits as stormwater management tools for the permittees.

As required by agreement with EPA, DEMLR sent the proposed General Permit to EPA Region IV staff in Atlanta on August 15, 2014 for the agency's review. On September 24, 2014, EPA Region IV responded with no comments, other than to request an additional review of the General Permit if DENR had made significant changes in response to public comments. EPA's additional review and approval would be necessary if the proposed final General Permit incorporated significant changes from the published draft version or if significant public comments objecting to the permit were received. DEMLR concluded that neither of these criteria was met, and therefore further EPA review before final issuance was not required.

DEMLR routinely prepares this summary document both for those that submit written comments on the draft General Permits, as well as for other interested parties. This document will be posted on our website for public access.

### **Comments and Responses**

DEMLR received only one set of comments on the proposed draft General Permit NCG160000 during the public comment period mandated by North Carolina rules. We note that we

similarly received only one set of comments on NCG16 during the previous public comment period five years earlier (2009).

In addition, in 2013 DEMLR also received public comments on five other General Permits covering five other regulated industrial sectors. For the sake of a consistent regulatory approach across multiple industry sectors, several of those comments received on the 2013 General Permits were incorporated into the Draft NCG16 published for public comment.

The comments in this public comment period came from a construction materials supplier operating several facilities manufacturing asphalt paving mixtures. We paraphrase those comments as listed below.

- 1. Commenter questioned the need to monitor asphalt sites for Non-polar Oil and Grease. He noted that without a constant heat input (>250 F) asphalt hardens and cannot travel any significant distance in the environment. He also reported that using diesel fuel as a bed lubricant and cleaning solvent is no longer practiced in the industry. He further noted that the monitoring data presented in DEMLR's published Fact Sheet shows a very low hit rate for TPH (< 2% of measurements), and that the data should be interpreted to indicate that petroleum products, whether measured as TPH or as non-polar Oil and Grease, are not likely pollutants at these sites.**

Response: We concur with the commenter's observations and analysis. We further note that information in the 1994 original development documents noted that the monitoring data for the Group Application for asphalt sites also did not report a significant hit rate on Oil and Grease analyses.

Result: We have removed semi-annual sampling for Non-polar Oil and Grease as an unqualified requirement in the final version of NCG16. However, we have added new monitoring for qualifying vehicle maintenance area discharges (> 55 gallons per month new motor oil usage) for both TSS and non-polar Oil and Grease. Our expectation is that relatively few of the permittees operate qualifying vehicle maintenance areas, and so relatively few of our permittees will have this additional monitoring requirement.

- 2. Commenter points out that while the Tiered structure prompts additional monthly monitoring for repeated benchmark exceedances, the permit does not incentivize or reward those facilities that are able to consistently achieve discharges below the benchmark values. Commenter requests some mechanism in the permit text to allow reduced sampling at sites with documented good performance over time.**

Response: We considered provisions in past versions of NCG16 and in other industry sector permits that have previously required only annual sampling, or have required only first and last year sampling if early results are below cutoff concentrations. One additional variation of the cutoff concentration approach used by some other states is to allow the averaging of accumulated results to trigger the cutoff concentration relief

from monitoring. However, our continuing perspective is that twice-per-year monitoring is the minimal site management attention required to discover and respond to discharge problems that may be otherwise unintentional and undiscovered. The sampling burden imposed by this year's version of NCG16 is for the permittee to take 10 TSS samples per outfall over a five year period. Generally this is no more burdensome than other stormwater permits being written in many other industry sectors subject to the federal NPDES rules. Based on the stormwater pollution risk characteristic of their sites, some other industry sectors have no analytical monitoring requirements: however many other industry sectors have many more analytical monitoring requirements than the asphalt paving mix industry.

Result: We have retained the twice-per-year sampling for each stormwater outfall. Please note that the permit text already allows for the consideration of representative outfall status whereby DEMLR can effectively reduce the monitoring burden based on an inspection by the Regional Office staff and their recommendation in support of representative outfall status. The Regional Office can specifically consider a permittee's good performance in considering whether to support a request for representative outfall status. While this won't reduce the sampling per outfall, it can reduce the number of outfalls that must be sampled at a particular site with multiple outfalls.

### **Summary of Significant Changes from the draft General Permit**

1. As described above we have removed Non-polar Oil and Grease from the monitoring requirements in site stormwater discharges.
2. Additionally, for facilities that have qualifying vehicle maintenance area discharges we have added monitoring for TSS and Non-polar Oil and Grease. We expect nearly every permittee to benefit from the first permit revision; we expect relatively few permittees to be affected by the second action.

### **Summary of Significant Changes from the Previous General Permit**

1. The following minor changes appear throughout the revised General Permit:
  - a. Minor word changes, format changes, and sequencing of paragraphs;
  - b. Table of Contents reflects minor re-ordering of some sections;
  - c. Reference now to the **Division of Energy, Mineral, and Land Resources** as the permitting authority, rather than the now defunct Division of Water Quality.
2. Part I, Section B now provides that **the permittee's Certificate of Coverage is an enforceable part of the General Permit.**
3. Part II, Section A has renamed the several elements required as part of the Stormwater Pollution Prevention Plan (SPPP).
4. Part II, Section A includes minor re-wording to be more specific on the required content of several of the elements of the SPPP.

5. Part II A 2(b) now further clarifies that an **Oil Spill Control and Countermeasure Plan (SPCC) can serve to partially comply with the SPPP requirements.**
6. Part II A 3 amends the requirement to have a responsible person on site **during facility operations that have increased potential** to contaminate stormwater.
7. Part II, Sections B, C, and D **require monitoring during a measurable storm event** (new term) rather than a representative storm event (old term.) This revised sampling requirement should make it easier for permittees to obtain the required samples.
8. Part II, Section B **removes the requirement to sample for pH** in site stormwater discharges. *Basis for change:* As reported in our Fact Sheet, during the last permit cycle less than two percent of measurements of pH were outside the benchmark range of  $6 < \text{pH} < 9$ . Further, we were not able to identify a likely source for pH excursions on asphalt sites. We concluded that it is not appropriate to include monitoring of this parameter in an industry wide General Permit intended to address pollutants likely present across the industry.
9. Part II, Section B also **removes the requirement to sample for TPH**. Similar to the data set for pH, less than 2% of TPH measurements over the last permit cycle were above the benchmark of 15 mg/L. *Basis for change:* Again, similar to the rationale for pH. We note that the Fact Sheet for the original 1994 NCG16 permit reported that the data set submitted with the Group Application noted that neither the pH measurements nor the measurements of petroleum compounds could on the basis of the data set alone support including these parameters in the permit. Subsequent data collected in North Carolina since that time corroborates that initial assessment.
10. Part II, Section B adds **a new lower benchmark for TSS (50 mg/L)**, applicable to especially protected and sensitive waters classified as Outstanding Resource Waters, High Quality Waters, Trout Waters, and Primary Nursery Area waters.
11. Part II, Section B Table 2 has been revised to adjust the duration of the first and last monitoring periods so that the start and end dates of the intervening periods coincide with the calendar half-year dates (Jan – June, July – Dec).
12. Part II, Section D On-Site Vehicle Maintenance Monitoring Requirements has been added for qualifying sites (sites using > 55 gallons per month of motor oil.) **Twice-per-year sampling and analyses for TSS and non-polar oil and grease** are required for qualifying sites.
13. The Standard Conditions in old Parts III – VI have been reorganized to be consistent with other NPDES permits Standard Conditions. All newly re-issued General Permits are being written to include the elements of the new Standard Conditions. Most of the provisions are unchanged. However, some significant changes include:
  - a. Part III A 1 clarifies SPPP compliance requirements for existing facilities applying for renewal.
  - b. Federal and state law and rule citations have been added for reference in several of the paragraphs throughout the Standard Conditions.
  - c. Part III B 1 **no longer requires the permittee to submit a renewal application within 180 days of permit expiration.**  
Part III, Sections B, D, and E provide new standard conditions related to the **anticipated roll-out of on-line electronic reports and electronic records.**

## **Conclusion**

DEMLR's overall intent in proposing changes to the General Permit was to provide permit requirements that will encourage permittees to respond with prompt corrective action to the discovery of pollutant discharges indicated by visual observation or analytical results in excess of the benchmark values. DEMLR incorporated public comments on other recent (2013) draft General Permits where we agreed that the comments were helpful and relevant to NCG16.

END